IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-9-2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.864 of 2004

1.Rajendran
2.Chinnathambi
3.Viswakethu .. Appellants

vs

State by
Inspector of Police
Pappireddipatti Police Station
Dharmapuri District
Crime No.284/95 .. Respondent

Criminal appeal preferred under Sec.374 (1) of the Code of Criminal Procedure against the judgment of the Additional Sessions Judge, Dharmapuri, in S.C.No.219 of 2002 dated 26.4.2004.

For Appellant : Mr.C.H.Pandian
for Mr.S.S.Annadurai

For Respondent : Mr.P.Kumaresan, A.P.P.

JUDGMENT

(Judgment of this Court was delivered by M.CHOCKALINGAM, J.)

The appellants have challenged the judgment of the Additional Sessions Division, Dharmapuri, in S.C.No.219 of 2002 whereby A-1 and A-2 stood charged under Sections 342, 302 read with 34 and 201 of I.P.C., while A-3 under Sec.201 of I.P.C., tried and found guilty and awarded the punishment as stated below.

A-1 and A-2 – 1 year R.I. and fine of Rs.1,000/- under Sec.342 of IPC. Life sentence and fine of Rs.3,000/- under Sec.302 of I.P.C. and 2 years R.I. and fine of Rs.1,000/- under Sec.201 of I.P.C.
A-3 – 2 years R.I. and fine of rs.1,000/- under Sec.201 of I.P.C.

2.The short facts necessary for the disposal of this appeal can be stated thus:

(a) P.W.3 is the mother of A-1 and A-2 and also the deceased Mullai Arasu. They had family dispute, and both A-1 and A-2 were torturing him. On the date of occurrence, namely 13.6.1995, both of them beat him in the house and took the body in a gunny bag and screened the same by throwing it into the riverbed. A-3 also joined in that act of screening the evidence. On 21.7.1995, it was brought to

the notice of P.W.1, the Village Administrative Officer (V.A.O.), that a dead body was found. On 21.7.1995, A-3 approached him and made a confession, which was recorded, and it is marked as Ex.P2. P.W.1 took A-3 to the respondent Police Station, where the Sub Inspector of Police was present. He gave a complaint which is marked as Ex.P1. On the strength of Ex.P1, the complaint, a case came to be registered in Crime No.284/95. The First Information Report, Ex.P16, was despatched to the Court.

(b) On receipt of the copy of the FIR, P.W.15, the Inspector of Police, took up investigation. A-3 took the Investigating Officer and also the V.A.O. to the scene of occurrence. P.W.15 made an inspection of the spot and prepared Ex.P12, the observation mahazar, and Ex.P13, the rough sketch. A requisition was given to the Tahsildar concerned. P.W.13, the Tahsildar, came over to the spot, made an inquest on the dead body and prepared an inquest report, Ex.P14. On a requisition, P.W.12, the Doctor, came over there and conducted autopsy on the dead body of Mullai Arasu. The Doctor has given his opinion under Ex.P9, the postmortem certificate, that the deceased would appear to have died of 35 to 40 days prior to autopsy.

(c) Pending the investigation, pursuant to the confessional statement by A-3, A-1 and A-2 were also arrested, and they were also sent for judicial remand. The Investigator examined the other witnesses also, who spoke about the circumstances. P.W.16, the Inspector of Police, took up the further investigation, and on completion of investigation, he filed the final report.

3.The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution examined 17 witnesses and also relied on 18 exhibits and 1 material object. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced, found the appellant/accused guilty and awarded the punishment as referred to above. The conviction and sentence imposed by the lower Court are the subject matter of challenge before this Court.

4.Advancing his arguments on behalf of the appellant, the learned Counsel would submit that in the instant case, the only witness who spoke about the family circumstances and the alleged dispute which enraged A-1 and A-2 to attack their brother, the deceased Mullai Arasu, and caused his death, was P.W.3; but, P.W.3 has turned hostile; that even in the case, the only witness who identified the dead body which was in a decomposed stage after exhumation, was P.W.3; but, she did not identify, nor had she spoken anything as to the identity of the dead body; that no other evidence is available in the entire case papers pointing to the fact that it was the dead body of Mullai Arasu; that the other witnesses who were examined regarding the attacks made by A-1 and A-2 on Mullai Arasu, was P.Ws.6 and 7; and that according to P.W.6, one day he found the deceased being tied in a post, and A-1 and A-2 were beating him, and when questioned, they warned him to go. The learned Counsel took the Court to the evidence of the Investigator who has candidly admitted that at the earliest, when he examined P.W.6, he had not spoken about the fact that he also found A-1 and A-2 attacking Mullai Arasu on one day, or he questioned the same, or he was warned and sent away.

5.Added further the learned Counsel that so far as P.W.7 was concerned, through he was not treated hostile, his evidence was not useful for the prosecution since it would reveal that one day, Mullai Arasu was suffering from fever, and he went over there and gave medicines, and no injury was found on him; that this would go to show that the alleged injuries that were caused by A-1 and A-2, were attributed to them in order to shape the prosecution case; that in such circumstances, the prosecution cannot rely on the evidence of P.W.7; that apart from that, the other material relied on by the prosecution was the confessional statement alleged to have been given by A-3 to the Village

Administrative Officer, P.W.1, on 21.7.1995; that the alleged confession made by A-3, would not bind A-1 and A-2; that apart from that, P.W.10, a Villager, examined by the prosecution, has candidly admitted that on the previous day night at about 11.30 P.M., that was on 20.7.1995, the V.A.O. came to his house; that he accompanied him; that they went to the place of occurrence; that they exhumed the body; and that after seeing the dead body, they put it inside and closed it by sand; that it would be quite clear that P.W.1, the V.A.O., had clear knowledge that the dead body was buried in a particular place; that now, the evidence of P.W.1 that A-3 came to his house on 21.7.1995 morning; that he also gave a confessional statement, and then, he was taken to the Police Station; that thereafter, he gave a confession to the Investigating Officer; that the Investigating Officer accompanied by A-3, went to the scene of occurrence; that the Doctor P.W.12 also went to the place; that the dead body was exhumed in the presence of the Tahsildar; and that the inquest was done was nothing but a story which is sorted out, and under the circumstances, the confession alleged to have been made by A-3, would not bind A-1 and A-2 in the eye of law; that the same will not serve any purpose for the simple reason that it did not lead to any recovery of any material fact; that apart from that, it would be quite clear that the alleged confession by A-3 was nothing but an introduction by the prosecution to suit its case, but in vain; that no other material is available; that under the circumstances, the lower Court should have acquitted the accused, but not done so, and hence, they are entitled for acquittal in the hands of this Court.

6.The Court heard the learned Additional Public Prosecutor on the above contentions.

7.The Court paid its anxious consideration on the submissions made.

8.In the instant case, the specific case of the prosecution was that A-1 and A-2 who are the brothers of the deceased Mullai Arasu, due to the family quarrel, beat him and caused his death, and along with A-3, they screened the evidence by putting the dead body in a gunny bag and threw it into the riverbed, and on 21.7.1995, A-3 surrendered before P.W.1, the V.A.O., when he gave a confessional statement about the whole occurrence. Now, at this juncture, it remains to be stated that the dead body on exhumation in the presence of the Tahsildar, was subjected to postmortem. As could be seen from the available materials, there is nothing to doubt about the identity of the deceased since it was a specific case of the prosecution that Mullai Arasu, the brother of A-1 and A-2 and the son of P.W.3, was done to death, and his dead body was buried. The specific charge has also been levelled against A-1 and A-2. At no point of time, A-1 and A-2 have questioned the identity of the deceased Mullai Arasu. Now, at this juncture, the contention put forth by the learned Counsel for the appellants questioning the identity of the deceased has got to be discarded. But, at the same time, in the instant case, there is no direct evidence for the prosecution to offer. The prosecution relied on two circumstances. The first circumstance was that P.W.6 noticed on one day that A-1 and A-2 were beating the deceased, and the same was questioned by him; but, he was warned by the accused. Now, from the evidence of the Investigating Officer, it would be quite clear that this statement made by P.W.6 before the Court, was not at all given in the statement recorded by the Investigator at the earliest. Thus, it could be seen that it was only a development made by the witness before the Court, and hence, it cannot be given any credence. The other circumstance was that of P.W.7, according to whom, he treated the deceased for his ailment. This will not in any way be pointing to the guilt of the accused.

9.Yet another circumstance relied on by the prosecution was the confessional statement alleged to have been given by A-3 to P.W.1, the V.A.O., that was on 21.7.1995. According to P.W.10, the V.A.O. came to his house on 20.7.1995 at about 11.30 P.M., and both of them went to the place, exhumed the dead body and again placed it as it was, and they returned back. Now, at this juncture, the fact that the V.A.O. came forward to give evidence that A-3 came to his house on 21.7.1995 and he confessed about the occurrence, and he also took him to the Police Station, and all of them went

over there, and in the presence of the Tahsildar, the dead body was taken out was nothing but an introduction, which would be quite evident, and thus, that part of the case of the prosecution as to the alleged confession by A-3 and recovery of the dead body and the other proceedings that followed, was completely destroyed by the evidence of P.W.10. Under the circumstances, the prosecution suffered with any evidence either direct or circumstantial. It is a case, where A-1 and A-2 or A-3 can be saddled with any one of the accusations made against them, and hence, they are entitled for acquittal.

10.In the result, this criminal appeal is allowed, setting aside the judgment of the lower Court. The appellants are acquitted of the charges levelled against them. The fine amounts paid by them will be refunded to them. The bail bond executed by them shall stand terminated.

To;

1.The Principal Sessions Judge
Dharmapuri

2.The Additional Sessions Judge
Dharmapuri

3.The Chief Judicial Magistrate,
Dharmapuri at Krishnagiri

4.The Judicial Magistrate,
Hosur.

5.The Public Prosecutor
High Court, Madras.

6.The Inspector of Police
Pappireddipatti Police Station
Dharmapuri District
Crime No.284/95

7.The District Collector
Dharmapuri

8.The Director General of Police
Madras.

Nsv/

[PRV/8189]